Supreme Court, U.S.
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CLERK

87-307

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

COMMONWEALTH OF PENNSYLVANIA,
Appellee

vs.

LEE ANTHONY KONDOR,
Appellant

ON APPEAL FROM THE SUPERIOR COURT
OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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63 pp

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QUESTIONS PRESENTED BY THIS APPEAL

(1) Whether the Pennsylvania fifty-five (55) mile per hour speed limit is unconstitutional in that Pennsylvania enacted it under economic coercion from the United States in violation of Pennsylvania's sovereignty under the Tenth Amendment to the United States Constitution?

(2) Whether Appellant was a victim of discriminatory enforcement of the fifty-five (55) mile per hour speed limit, a violation of his right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution by virtue of the fact that the Pennsylvania State Police Routeinely do not enforce the fifty-five (55) mile per hour speed limit against high officials of their own police force?

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS IN COURT BELOW

This Appeal lies from the unreported Memorandum Opinion and Judgment of the Superior Court of Pennsylvania dated June 2, 1986, 357 Pa. Superior Ct. 636, 513 A.2d 1076, (1986), which affirmed the Opinion and Order of the Court of Common Pleas of Lancaster County, Pennsylvania dated July 1, 1985 to No. 1619 of 1983, unreported.

The Supreme Court of Pennsylvania denied review of May 26, 1987, Per Curiam, to No. 593 E.D. Allocatur Docket 1986, unreported.

JURISDICTION OF THIS COURT

This is an Appeal from a conviction of Appellant under the Pennsylvania fifty-five (55) mile per hour speed limit. Specifically, Appellant was convicted of violating Section 3362(a)(2) of the Pennsylvania Motor Vehicle Code, 75 Pa. C.S. §3362 (a)(2), in that he was traveling at sixty-five (65) miles per hour on June 5, 1983, ten (10) miles per hour in excess of the fifty-five (55) mile per hour speed limit then in force and effect in Pennsylvania.

This Court has jurisdiction of the within Appeal pursuant to 28 U.S.C. §1257(2), in that it is an Appeal from a Judgment of the Court of "last resort" in Pennsylvania. In this instance, the Court of "last resort" is the Superior Court of Pennsylvania, since the Supreme Court of Pennsylvania denied review on May 26, 1987, Per Curiam.

The date of the Judgment from which Appellant seeks review is dated June 2, 1986, but the period for Appeal under the Rules of this Court began to run on May 26, 1987. Notices of Appeal were filed in the Superior Court of Pennsylvania on August 11, 1987 and in the Court of Common Pleas of Lancaster County on August 10, 1987 within ninety (90) day of the refusal of review by the Supreme Court of Pennsylvania, in compliance with Rule 11 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS APPEAL

This Appeal involves interpretation of the Tenth Amendment to the United States Constitution, as it bears on the power of Congress to enact legislation requiring the States to set maximum speed limits upon their highways. As such, it will require this Court to balance the Tenth Amendment against the so-called "Commerce Clause" at Article I, Section VIII, Clause III of the United States Constitution and/or the "Spending Power Clause" at Article I, Section VIII, Clause I of the United States Constitution. Further, it will involve a review of 23 U.S.C. §154(a) as it existed in 1983 (§154(a) was revised by Congress in the Federal-Aid Highway Act of 1987 at Section 174 thereof "upping" the 55 mile per hour speed limit to 65 miles per hour), since that statute contained the national maximum speed limit of 55 miles per hour, and prohibits federal

highway funds to any State not conforming with its requirements (the statute actually requires submission of plans, surveys and specifications of highway projects by each state for approval prior to receipt of federal funds--see 23 U.S.C. §106 at Appendix pages xxxiv and xxxv); i.e., 23 U.S.C. §154(a) and §106 work in tandem.

The Appeal will also involve review of the legislative text and history of the Pennsylvania 55 mile per hour speed limit set forth at 75 Pa. C.S. §3362(a)(2) since this Appeal involves the allegation that Pennsylvania enacted the legislation pursuant to Federal coercion. Texts of the foregoing are set forth in the Appendix, ppgs. xxix through xxxvii, in conformity with the Rules of this Court.

Finally, this case involves an interpretation of the due process and equal protection clause of the Fourteenth Amendment

to the United States Constitution, vis a vis the discriminatory enforcement of the laws issue.

STATEMENT OF THE CASE

On June 5, 1983, Trooper Robert C. Gordon, a member of the Pennsylvania State Police, was on duty and in uniform, driving an unmarked vehicle, referred to as the "fifty-five car" by the State Police. The speedometer of the vehicle was tested on April 27, 1983 at David Reiser's Speedometer Repair in Telford, Pennsylvania. At approximately 5:20 p.m. Trooper Gordon noticed a blue American Motors car pass him on Route 222, Southbound in East Cocalico Township while he was traveling 55 miles per hour. He pulled out into the passing lane, established a constant distance between himself and Appellant's vehicle, and in West Earl Township, testified that he clocked Appellant's speed at sixty-five (65) miles per hour. Trooper Gordon further testified that project "fifty-five" and "fifty-five" vehicles are utilized pursuant to a program of the Commonwealth of Pennsylvania to

insure compliance with the federally mandated fifty-five (55) mile per hour speed limit in Pennsylvania.

Appellant had subpoenaed seven (7) State Troopers to establish that on at least eleven (11) occasions they had stopped then Deputy Commissioner of State Police, Cyril Laffey, for exceeding the fifty-five (55) mile per hour speed limit prior to the time of Appellant's violation. On April 6, 1984, the subpoenaed individuals moved to quash the subpoenaes and on April 9, 1984, the trial court granted their motion. At trial, Appellant offered depositions of the seven (7) State Troopers and Deputy Commissioner Cyril Laffey into evidence, and although the Depositions were refused into evidence, they were marked for the record for purposes of Appellate review.

In pre-trial motions, at trial, in post-trial motions and in the Superior and Supreme

Courts of Pennsylvania Appellant raised the constitutionality of the 55 mile per hour speed limit under the Tenth Amendment, and the issue of discriminatory enforcement of the 55 mile per hour speed limit under the Fourteenth Amendment to the United States Constitution.

The trial court ruled by Judge Perezous (See Appendix at pages vi through xvii) that the 55 mile per hour speed limit was constitutional under the Tenth Amendment and that although the Court did not condone any policy by the State Police of letting members of their own force violate the 55 mile per hour laws, this discriminatory practice did not rise to the level of a constitutional violation, citing Oyler v. Boles, 368 U.S. 448 (1962). The Court further ruled that since the "possible policy" (Appendix at pages xii and xiii) did not rise to the level of a constitutional violation under the Fourteenth Amendment, it followed

that the testimony and/or depositions of the State Troopers were irrelevant and inadmissable.

Appellant timely appealed to the Superior Court of Pennsylvania, which Court affirmed Per Curiam through its system of three-Judge panels. The Panel issued a Memorandum Opinion, however, which reviewed the issues above-mentioned seriatim and simply stated, "After a careful review of the record, we find that Judge Perezous' Opinion adequately disposes of these issues." (Appendix page iii)

Appellant then timely appealed to the Supreme Court of Pennsylvania, raising these same issues to that Court. On May 26, 1987, the Superior Court of Pennsylvania denied review, Per Curiam, without opinion.

REASONS FOR REVIEW BY THIS COURT

Even a cursory review of the legislative history of the Pennsylvania 55 mile per hour speed limit indicates that Pennsylvania enacted it pursuant to Federal coercion.

In debating the 55 mile per hour speed limit in the Pennsylvania House of Representatives, Mr. Taddonio of Westmoreland County offered an Amendment (which became law) to allow no conviction unless there was evidence to show that the violator was "six or more miles" in excess of the legal speed limit. The following typical comments occurred:

> "On the question,
> Will the House agree to the Amendment?"
>
> THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Westmoreland, Mr. Taddonio.
>
> MR. TADDONIO: Mr. Speaker, this Amendment restores the code to its original provision as it relates to radar and the 5 mile-an-hour grace over the legal speed limit. Now, I realize that there is

"some objection to this about the Federal Government mandating strict enforcement of 55 mile-an-hour speed limits. I believe we are strictly enforcing it now. I think that all we are doing right now is questioning the accuracy of the calibration of the speedometer. I would hate to see a constituent picked up for 2 or 3 miles over the speed limit when his speedometer really is not that accurate. I really do not think that we are trying to do anything by leaving this in here. I would like to see the Federal Government really come down and tell us specifically they are going to withdraw funds because of this. I do not believe they will do it and I solicit the support of the House on this Amendment.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Allegheny, Mr. Bonetto.

MR. BONETTO: Mr. Speaker, this is a perfect way to kill House Bill No. 1817. If that is what the members want, fine. The Federal Government has enacted legislation that the fifty-five mile per hour speed limit is the law of the land. We cannot give grace on over 55 miles per hour in this state or any other state. Now they are not going to come down here and say, ladies and gentlemen, you have made a mistake. But whenever you ask for money, they are going to say there is none. And this code means $30 million."

Pennsylvania Legislative Journal--House, 1976 at page 4043.

Moreover, Pennsylvania has consistently complied with the fifty-five mile per hour speed limit since 1976. (See letter of Harold Butz, Jr., Director of Enforcement and Emergency Services of the United States Department of Transportation, National Highway Safety Administration, dated October 7, 1983 at Appendix page xxxviii)

Does Pennsylvania have the right to control its own speed limits under the Constitution, specifically under the Tenth Amendment and without interference from the Federal Government? This Court has the responsibility to determine this issue; no Federal Court has decided this issue, and only this Court can give the answer.

This Court has, in recent decisions, narrowed the rights to States to be free from Federal coercion. South Dakota v. Dole, 55 L.W. 4971 (1987); Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528; 83

L Ed 2d 1016 (1985); 105 S. Ct. 1005. The limitations sought to be imposed on the Federal Government by States or others have sometimes focused on specifically worded Amendments to the Constitution, as in Dole, supra--Twenty-First Amendment, or on more generally worded Amendments such as the Tenth Amendment. Garcia, supra.

Squarely put, this Court has ruled in the above contexts that the "commerce clause" and/or the "spending clause" of Article I, Section VIII, Clauses I and III, respectively, empower the Congress to override State sovereignty; the States must rely on the "political process" to protect their interests. Garcia, supra, at L Ed pps. 1034 through 1036.

This Court has, however, made it clear that some restraints on the commerce and/or spending powers exist. Garcia, supra at L Ed 2d p. 1036; Dole, supra, 55 L.W. at 4973:

> "Our decisions have recognized that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which "pressure turns into compulsion." Stewart Machine Co. v. Davis, supra, at 590."

In this case, unlike South Dakota v. Dole, supra, the cutoff facing Pennsylvania is not five (5%) percent of Federal Highway Funds, but a complete shutoff. If a complete shutoff of funds is not compulsive, then the Federal Government cannot be said to force a State to do its will by any means short of physical force. Moreover, a review of the legislative history of the Pennsylvania statutes indicates beyond peradventure that such compulsion was obeyed.

The Courts below have not accorded this case the proper attention it deserves because this issue of the constitutionality of the 55 mile per hour speed limit raises the fundamental threshold question of where Federal authority ends and State sovereignty begins.

Secondly, Appellant has raised the issue of discriminatory enforcement of the law as applied to him. Why should the Pennsylvania State Police be entitled to let police officers speed because they are police officers, when every other person on the highways of Pennsylvania is routinely prosecuted for violation? The trial court would not allow Appellant to call witnesses to prove his allegations; but the sworn depositions of the State Policemen and then Deputy Commissioner Cyril Laffey show eleven (11) separate occasions of speeding by the Deputy Commissioner and in each such case, he was released as a "professional courtesy" or a matter of "discretion".

The decision not to prosecute Deputy Commissioner Laffey for the arbitrary reason that he is a fellow State Trooper is precisely the arbitrariness against which the equal protection clause of the Fourteenth Amendment protects:

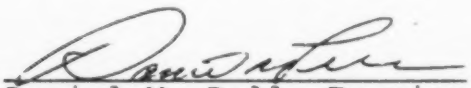
Oyler v. Boles, 368 U.S. 448, 456; 7 L Ed 2d 446; 82 S. Ct. 501 (1962); Bordenkircher v. Hayes, 434 U.S. 357, 364; 54 L Ed 2d 604; 98 S. Ct. 663 (1978); Wayte v. U.S., 470 U.S. 598; 84 L Ed 2d 547; 105 S. Ct. 1524 (1985).

Appellant is a member of the class of all persons driving on the highways of Pennsylvania who is entitled to equal treatment with those "elite" members of another class--Pennsylvania State Troopers. The violation of constitutional law in this case is not only arbitrary but particularly ugly since the Pennsylvania State Police are charged with enforcement of the laws in Pennsylvania.

CONCLUSION

This Court should grant Appellant review of his case for the reasons stated herein and should reverse his conviction.

RESPECTFULLY SUBMITTED BY



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Dated: August 19, 1987

APPENDIX

SUPREME COURT OF PENNSYLVANIA

Eastern District

MARLENE F. LACHMAN, ESQ.
PROTHONOTARY

468 City Hall
Philadelphia, PA 19107
215-560-6370

PATRICK TASSOS
DEPUTY PROTHONOTARY

June 3, 1987

Daniel M. Pell, Esq.
Suite 201
2 West Market Street
York, PA 17401

Re: Commonwealth v. Lee Anthony Kondor,
Petitioner
No. 593 E.D. Allocatur Docket 1986

Dear Mr. Pell:

This is to advise you that the following order has been endorsed on the Petition for Allowance of Appeal filed in the above-captioned matter:

May 26, 1987
PETITION DENIED.
Per Curiam

Very truly yours,

/s/ Patrick Tassos
Patrick Tassos
Deputy Prothonotary

PT:ejh
cc: Charles A. Achey, Jr., Esq.
Leroy S. Zimmerman, Esq.

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

J. 17031/1986

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR
	:	COURT OF
v.	:	PENNSYLVANIA
	:	
LEE ANTHONY KONDOR	:	No. 02086
Appellant	:	Philadelphia
	:	1985

Appeal from the Order entered
in the Court of Common Pleas of
Lancaster County, Criminal,
No. 1619 of 1983.

Before: CAVANAUGH, WATKINS AND LIPEZ, JR.

MEMORANDUM:

In this appeal from a conviction for violating section 3362(a)(2) of the Pennsylvania Motor Vehicle Code, 75 Pa. C.S. §3362(a)(2) (driving a vehicle in excess of fifty-five miles per hour), defendant claims that: (1) the fifty-five mile per hour speed limit is unconstitutional because it was enacted under federal "coercion"; (2) he was denied equal protection of the laws by virtue of discriminatory enforcement of the speed limit against a particular "class" (members of the general public as opposed to high-level state police officials); (3) the testimony of the ar-

resting officers should have been excluded because the officer clocked defendant's speed without issuing an audible signal while in pursuit; (4) the court erred in quashing subpoenas of seven State Policemen and the Deputy Commissioner of the State Police, whose presence would have enabled defendant to show discriminatory enforcement of the speed limit; (5) the court erred in refusing to allow into evidence the depositions of the seven State Policemen and Deputy Commissioner as to discriminatory enforcement of the speed limit; and (6) the court erred in failing to dismiss the citation because the place of the offense listed thereon differs from the place where the offense occurred. After a careful review of the record, we find that Judge Perezous' opinion adequately disposes of these issues.

Order affirmed.

7. 17031/1986

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR
	:	COURT OF
v.	:	PENNSYLVANIA
	:	
LEE ANTHONY KONDOR	:	No. 02086
Appellant	:	Philadelphia
	:	1985

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of Lancaster County be, and the same is hereby AFFIRMED.

BY THE COURT:

/s/ J. Haniel Henry
J. Haniel Henry
Prothonotary

Dated: June 2, 1986

J. 17031/1986

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR
	:	COURT OF
v.	:	PENNSYLVANIA
	:	
LEE ANTHONY KONDOR	:	No. 02086
Appellant	:	Philadelphia
	:	1985

Appeal from the Order entered
in the Court of Common Pleas of
Lancaster County, Criminal,
No. 1619 of 1983.

Before: CAVANAUGH, WATKINS and LIPEZ, JR.

PER CURIAM:

Order affirmed.

Filed June 2, 1986

IN THE COURT OF COMMON PLEAS OF
LANCASTER COUNTY, PENNSYLVANIA

C R I M I N A L

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	No. 1619 of 1983
	:	
LEE ANTHONY KONDOR	:	

O P I N I O N

BY PEREZOUS, J.

Before the Court are the post-trial motions of Defendant Lee A. Kondor in arrest of judgment and for a new trial.

On June 5, 1983, Defendant was charged with violating Section 3362 (a)(2)[1] of the Pennsylvania Motor Vehicle Code. It was established that Defendant was traveling at the rate of 65 miles per hour by a Pennsylvania

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1 That section provides, in pertinent part:

> (a) General Rule - Except when a special hazard exists that requires lower speed for compliance with Section 3361 (relating to driving vehicle at safe speed), the limit specified in the subsection or established under this subchapter shall be maximum lawful speeds and no person shall drive a vehicle at a speed in excess of the following maximum limits: . . .
>
> (2) Fifty-five miles per hour in other locations.

75 Pa. C.S.A. 3362(a)(2).

State Policeman who, while traveling in an unmarked vehicle, notice the Defendant traveling at what the Trooper believed to be an excessive speed. He then followed the Defendant for at least six tenths of a mile, maintaining a uniform distance between his vehicle and Defendant's, during which time the State Policeman was traveling 65 miles per hour.

Defendant filed a motion to quash the citation, alleging the unconstitutionality of the 55 mile per hour speed limit under the Tenth Amendment to the United States Constitution, which motion was denied October 28, 1983. Defendant issued subpoenaes to seven Pennsylvania State Troopers and also to then Deputy Commissioner Cyril Laffey of the Pennsylvania State Police. On April 6, 1984, motions to quash these subpoenaes were presented, and the Court, on April 9, 1984, granted those motions. The case was brought to trial on the merits on April 11, 1984, before the undersigned and the Defendant was found guilty as charged.

Initially, Defendant argues that the Court erred in failing to rule that the 55 mile per hour speed limit as enacted in the Commonwealth of Pennsylvania is unconstitutional under the Tenth Amendment in that the Commonwealth enacted the law under coercion from the United States Government.

When examining the constitutionality of an Act of the general assembly there exists a strong presumption of constitutionality and a heavy burden of persuasion upon a party challenging the constitutionality. Com. v. Mikulan, _____ Pa. _____, 470 A.3d 1339 (1983). Therefore, an Act should not be declared void unless its violation of the constitution is so clear as to preclude doubt or hesitation. Com. v. Bryant, 239 Pa. Super. 43, 361 A.2d 350 (1976).

The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Defendant notes the following provision of the United States Code: "National maximum speed limit. (a) The secretary of transportation shall not approve any project under Section 106 in any state which has (1) a maximum speed limit on any public highway within its jurisdiction in excess of 55 miles per hour." 23 U.S.C. §154 (1981 Suppl.), and presents evidence which he contents establishes that the maximum 55 mile per hour speed limit of Pennsylvania was enacted as a result of federal coercion. He also cites three Supreme Court cases, National League of Cities v. Usery, 426 U.S. 833 (1976), Hadel v. Virginia Surface Mining and Reclamation Association, 452 U.S. 264 (1981) and Fry v. United States, 421 U.S. 542 (1975), in support of his position; however, all three cases involve the unconstitutionality of a federal statute whereas the specific issue in the present action is whether a state statute is unconstitutional.

While Defendant sets forth a persuasive argument in his brief that the maximum speed limit of Pennsylvania was enacted as a result of the federal statute, he has not presented any authority for declaring a state provision unconstitutional under the Tenth Amendment and therefore, in light of the burden upon Defendant in challenging the constitutionality of a statute, we will not find it unconstitutional.

Defendant next argues that the Court erred in failing to find that he was a victim of discriminatory enforcement of the 55 mile per hour speed limit in violation of his rights to the equal protection of the laws under the 14th Amendment of the United States Constitution. He maintains that such discrimination occurred by virtue of the state police not enforcing the 55 mile per hour speed limit against high officials of their own police force.

The Pennsylvania Supreme Court has held that the discriminatory enforcement of state criminal laws violates the equal protection

clause of the United States Constitution if the discrimination is purposeful or intentional. Com. v. Lewis, 443 Pa. 305, 279 A.2d 26 (1971), cert. denied 404 U.S. 1003. Regarding the discriminatory enforcement of the law it has been stated:

> The 14th Amendment prohibits any State from taking an action which would "deny to any person the equal protection of the laws."...[I]t has been recognized that the promise of equal protection of the laws not only means the enactment of fair and impartial legislation, but also extends to the application of these laws. In addition, the underlying principle is certainly applicable to the actions of prosecutors and police officials. (citations omitted.)
>
> While there is some indication that in Oyler v. Boles, 368 U.S. 448 (1962)...that, at least, selection based upon an unjustifiable standard such as race, religion or other arbitrary classification, would be a basis for federal constitutional violation, this court is also of the opinion that Oyler does not preclude the granting of relief if there is intentional or purposeful discrimination against an individual.

United States v. Yingling, 368 F. Supp. 379, 382, 383 (W.D. Pa. 1973).

In Oyler, the United States Supreme Court stated:

> Moreover, the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation. Even though the statistics in this case might imply a policy of selective enforcement, it was not stated that the selection was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification. Therefore, grounds supporting a finding of a denial of equal protection were not alleged. (citations omitted.)

368 U.S. at 456.

In the present case Defendant does not allege that he was discriminated against as an individual but asserts that he was a member of a class, "the general public versus the state police" (Defendant's brief at p.18), which was the object of unconstitutional discriminatory enforcement. While this Court does not condone any possible policy of the Pennsylvania State Police to not enforce the speed limit with respect to certain officials, Defendant's argument that the general public has been discriminated against does not rise to the level of a

constitutional violation based on the standards set forth in Oyler.

In conjunction with his equal protection argument Defendant submits that the Court erred in failing to permit into testimony certain depositions of State Troopers and that the Court erred in quashing seven defense subpoenaes, which errors did not allow Defendant to establish his equal protection argument. Inasmuch as we have held that the nonprosecution of certain officials does not rise to the level of a constitutional violation, any evidence which would have been presented to establish the nonenforcement of the 55 mile per hour speed limit against those officials was irrelevant.

Defendant also contends that the citation should be quashed since the arresting officer followed the Defendant for a distance of at least six tenths of a mile at the speed of 65 miles an hour without issuing an audible signal while in pursuit of the Defendant, thereby

violating Section 3105 of the Vehicle Code.[2] While a strict reading of that section may lead

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2 That section provides, in pertinent part:

> (a) General Rule - The driver of an emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions stated in this section.
> (b) Exercise of Special Privilege - The driver of an emergency vehicle may:
> . . .
> (3) Exceed the maximum speed limits so long as the driver does not endanger life or property, except as provided in subsection (d).
> (c) Audible and Visual Signals Required - The privileges granted in this section to an emergency vehicle shall apply only when the vehicle is making use of an audible signal and visual signals meeting the requirements and standards set forth in regulations adopted by the department, except that an emergency vehicle operated as a policy vehicle need not be equipped with or display the visual signals.
> . . .
> (e) Exercise of Care - This section does not relieve the drive of an emergency vehicle from the duty to drive with due regard for the safety of all persons.

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to the conclusion that a police vehicle must utilize an audible signal in every instance and at every second that it exceeds the speed limit, the imposition of such a regulation would render an extremely important method of determining speeding violations useless, since requiring a policeman to issue an audible signal while following a suspected speeder would alert that motorist thereby allowing him to slow down and avoid prosecution for an offense which he had been in the process of committing.

Furthermore, provisions regulating the speed of emergency vehicles generally arise in decisions regarding the liability of the emergency vehicle for damages incurred in accidents in which the emergency vehicle was exceeding the speed limit or violating some other motor vehicle code regulation, the issue being whether the emergency vehicle was operating with due care. See Peck v. Lewis, 26 D & C 3d 435 (Delaware County 1983), Junk v. East End Fire Dept., 262 Pa. Super. 473, 396 A.2d 1269 (1978). It should be noted that in any event

under Section 3105 the emergency vehicle must operate with due care, 75 Pa. C.S. §3105(e), and in the present action there is no indication that the Trooper acted other than with due care. Consequently, it does not appear that the issuing of an audible signal was required under the circumstances to operate with due care.

Finally, Defendant maintains that the citation should have been dismissed since it was demonstrated at trial that the offense took place at least a quarter or half mile from the location indicated on the citation. While Defendant submits that such a discrepancy is prejudicial there is no showing as to how it is prejudicial and absent such a showing the citation will not be dismissed on those grounds.

O R D E R

AND NOW, July 1, 1985, for the reasons set forth in the foregoing Opinion, Defendant's post-trial motions are denied and he is directed to appear for sentencing at the call of the District Attorney.

BY THE COURT:

/s/ Michael J. Perezous
MICHAEL J. PEREZOUS,
Judge

Attest: /s/ Diane L. Thompson

Copies to:
Charles A. Achey, Jr., Esquire, Asst. District Attorney
Daniel M. Pell, Esquire, Attorney for Defendant

IN THE SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA, Appellee	:	
	:	October Term,
vs.	:	1987
	:	
LEE ANTHONY KONDOR, Appellant	:	No.

NOTICE OF APPEAL

Notice is hereby given that Lee Anthony Kondor Appeals to the United States Supreme Court from the Judgment of the Superior Court of Pennsylvania in the case of Commonwealth of Pennsylvania, Appellee vs. Lee Anthony Kondor, Appellant dated June 2, 1986, entered to the record to No. 02086 Philadelphia 1985. The Supreme Court of Pennsylvania denied review of this case on May 26, 1987 by its Per Curiam Order entered to the record to No. 593 E.D. Allocatur Docket 1986.

The Supreme Court of the United States has jurisdiction of this Appeal pursuant to 28 U.S.C. §1257(2).

August 7, 1987 /s/ Daniel M. Pell

Filed August 11, 1987 Superior Court

Daniel M. Pell, Esquire
Attorney for Lee Anthony
Kondor, Appellant
262 East Market Street
York, PA 17403
(717) 843-7801

Filed in Superior Court

August 11, 1987

Philadelphia

IN THE SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA, Appellee	:	
vs.	:	October Term, 1987
LEE ANTHONY KONDOR, Appellant	:	

PROOF OF SERVICE

I, Daniel M. Pell, Esquire, a member of the Bar of the Supreme Court of the United States, hereby certify that I have this date served the following individuals with true and accurate copies of the foregoing Notice of Appeal by placing same in the United States mail, postage prepaid and addressed as follows:

Leroy S. Zimmerman, Attorney General
Commonwealth of Pennsylvania
Office of the Attorney General
16th Floor--Strawberry Square
Harrisburg, PA 17108

J. Haniel Henry, Prothonotary
Superior Court of Pennsylvania
2044 Robert N.C. Nix Sr. Federal Bldg.
Ninth and Market Streets
Philadelphia, PA 19107

Gloria V. Goldy, Clerk of Courts
Lancaster County Court House
50 North Duke Street
Lancaster, PA 17602

Charles A. Achey, Jr., Esquire
Assistant District Attorney
Lancaster County Court House
50 North Duke Street
Lancaster, PA 17602

/s/ Daniel M. Pell
Daniel M. Pell, Esquire
Attorney for Lee Anthony
Kondor, Appellant
262 East Market Street
York, PA 17403
(717) 843-7801

August 7, 1987

IN THE SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA, Appellee	:	
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	:	
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August 7, 1987 /s/ Daniel M. Pell

Clerk of Courts
'87 Aug 10 P4:41

Daniel M. Pell, Esquire
Attorney for Lee Anthony
Kondor, Appellant
262 East Market Street
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Clerk of Courts
'87 Aug 10 P4:41

IN THE SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA, Appellee	:	
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/s/ Daniel M. Pell
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August 7, 1987

UNITED STATES CONSTITUTION

AMENDMENT X, CLAUSE III

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

UNITED STATES CONSTITUTION

ARTICLE I, SECTION VIII, CLAUSE I
(Spending Clause)

The Congress shall have power:

1. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform through the United States.

UNITED STATES CONSTITUTION

ARTICLE I, SECTION VIII, CLAUSE III
(Commerce Clause)

3. To regulate commerce with foreign nations, and among the several States and with the Indian tribes.

UNITED STATES CONSTITUTION
AMENDMENT XIV, SECTION I
(Due Process/Equal Protection Clause)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TEXT OF 23 U.S.C. §154 (1983 Version)

154. National maximum speed limit.

(a) The Secretary of Transportation shall not approve any project under section 106 of any state which has (1) a maximum speed limit on any public highway within its jurisdiction in excess of fifty-five miles per hour, or (2) a speed limit on any other portion of a public highway within its jurisdiction which is not uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of had a speed limit which was uniformly applicable to all types of motor vehicles using it. A lower speed limit may be established for any vehicle operating under a special permit because of any wieght or dimension of such vehicle, including any load thereon. Clause (2) of this subsection shall not apply to any portion of a highway during such time that the condition of the highway, weather, an accident or other condition creates a temporary hazard to the safety of

traffic on such portion of highway.

(b) As used in this section, the term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

(c) Notwithstanding the provisions of section 120 sums apportioned by any state under section 104 shall be available to pay the entire cost of any modification of the signing of the Federal-aid highways for which such sums are apportioned within such state due to a reduction in speed limits to conserve fuel if such change in signing occurs or has occurred after November 1, 1973.

(d) The requirements of this section shall be deemed complied with by administrative action lawfully taken by the Governor or other appropriate state official that complies with this section.

(e) Each state shall submit to the Secretary such data as the Secretary determines

by rule is necessary to support its certification under section 141 of this title for the twelve-month period ending on September 30 before the date the certification is required, including data on the percentage of motor vehicles exceeding fifty-five miles per hour on public highways with speed limits posted at fifty-five miles per hour in accordance with criteria to be established by the Secretary, including criteria which takes into account the variability of speedometer readings and criteria based upon the speeds of all vehicles or a representative sample of all vehicles.

(f) If the data submitted by a state pursuant to subsection (e) of this section show that the percentage of motor vehicles exceeding fifty-five miles per hour is greater than 50 percent, the Secretary shall reduce the state's apportionment of Federal-aid highway funds under each of sections 104(b)(1), 104(b)(2) and 104(b)(6) of this title in an aggregate amount of up to 5 percent of the amount to be apportioned for the following fiscal

year, in the case of fiscal years 1982 and 1983 and up to 10 percent in the case of subsequent fiscal years.

(g) In any case where the Secretary determines, in accordance with criteria established by the Secretary, that a reduction in apportionment required by subsection (f) of this section would result in hardship to a state, the fiscal year apportionment reduced for such state shall be the apportionment for one fiscal year later than the fiscal year to which such reduction would apply under subsection (f) but for such hardship determination.

(h) The Secretary shall promptly apportion to a state any funds which have been withheld pursuant to subsection (f) of this section if he determines that the percentage of motor vehicles in such state exceeding fifty-five miles per hour has dropped to the level specified for the fiscal year for which the funds were withheld.

TEXT OF 23 U.S.C. §154(a), AS AMENDED BY CONGRESS--1987 PUBLIC LAW 100-17 TITLE I--FEDERAL AID HIGHWAY ACT OF 1987, §174, 23 U.S.C. §154(a) 154(f)

(a) IN GENERAL--Subsection 154(a) of title 23, United States Code, is amended---

(1) by inserting "other than a highway on the Interstate System located outside an urbanized area of 50,000 population or more, (2) a maximum speed limit of any highway within its jurisdiction on the Interstate System located outside of an urbanized area of 50,000 population or more in excess of 65 miles per hour" immediately after "hour"; and

(2) by renumbering "(2)" as "(3)" at the two places "(2)" appears.

(b) CONFORMING AMENDMENT--Subsection 154(f) of title 23, United States Code, is amended by inserting "onpublic highways with speed limits posted at 55 miles per hour" immediately after "hour".

TEXT OF 23 U.S.C. §106

106. Plans, specifications and estimates.

(a) Except as provided in section 117 of this title, the state highway department shall submit to the Secretary for his approval, as soon as practicable after program approval, such surveys, plans, specifications and estimates for each proposed project included in an approved program as the Secretary may require. The Secretary shall act upon such surveys, plans, specifications and estimates as soon as practicable after the same have been submitted, and his approval of any such project shall be deemed a contractual obligation of the Federal Government for the payment of its proportional contribution thereto. In taking such action, the Secretary shall be guided by the provisions of section 109 of this title.

(b) In addition to the approval required under subsection (a) of this section, proposed specifications for projects for construction on (1) the Federal-aid secondary systems,

except in states where all public roads and highways are under the control and supervision of the state highway department, and (2) the Federal-aid urban system shall be determined by the state highway department and the appropriate local road officials in cooperation with each other.

(c) Items included in any such estimate for construction engineering shall not exceed 10 per centum of the total estimated cost of a project financed with Federal-aid highway funds, after excluding from such total estimate cost the estimated costs of rights-of-way, preliminary engineering and construction engineering. However, this limitation shall be 15 per centum of any state with respect to which the Secretary finds such higher limitation necessary.

(d) In such cases as the Secretary determines advisable, plans, specifications and estimates for porposed projects on any Federal-aid system shall be accompanied by a value engineering or other cost reduction analysis.

TEXT OF 75 Pa. C.S. §3362

3362. Maximum speed limits.

(a) General rule--Except when a special hazard exists that requires lower speed for compliance with section 3361 (relating to driving vehicle at safe speed), the limits specified in this subsection or established under this subchapter shall be maximum lawful speeds and no person shall drive a vehicle at a speed in excess of the following maximum limits:

(1) 35 miles per hour in any urban district.

(2) 55 miles per hour in other locations.

(3) Any other maximum speed limit established under this subchapter.

(b) Posting of speed limit--No maximum speed limit established under subsection (a)(1) or (3) shall be effective unless posted on fixed or variable official traffic-control devices erected in accordance with regulations adopted by the department which regulations

shall require posting at the beginning and end of each speed zone and at intervals not greater than one-half mile.

(c) Penalty--Any person violating this section is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of $35.00. Any person exceeding the maximum speed limit by more than five miles per hour shall pay an additional fine of $2.00 per mile for each mile in excess of five miles per hour over the maximum speed limit.

U.S. Department
of Transportation

400 Seventh St. S.W.
Washington, DC 20590

National Highway
Traffic Safety
Administration

October 7, 1983

Mr. Daniel M. Pell
Moran & Pell
Attorneys at Law
32 South Beaver Street
York, Pa 17401-1398

Dear Mr. Pell:

This is in response to your letter of September 29, 1983, inquiring as to whether the Commonwealth of Pennsylvania has complied with the 55 mile-per-hour speed limit requirements under Federal law since 1976.

According to the records of this Department, the Commonwealth of Pennsylvania has complied with the various 55 mile-per-hour speed limit requirements established by Federal law and regulation for the annual reporting period (October 1 through September 30) in 1976, 1977, 1978, 1979, 1980, 1981, and 1982. The annual state certification for the 1983 reporting period will not be available until after January 1, 1984.

I hope this has been helpful.

Sincerely,

/s/ Harold A. Butz, Jr.
Harold A. Butz, Jr., Director
Office of Enforcement and Emergency Services